

REMARKS

In response to the Non-Complaint Amendment dated February 25, 2009, Claims 1 – 17 and 30 are now in proper format according to CFR 1.121.

Claims 18-23, 25-27, and 31 are currently pending in the present application, with Claims 18-21 and 31 being amended. Reconsideration and reexamination of the claims, as amended, are respectfully requested.

The Examiner rejected Claims 18-20, 25-29, and 31 under 35 U.S.C. 103(a) as being unpatentable over Hastings et al. (U.S. Patent No. 6,584,450) in view of Mallon et al. (U.S. Patent Pub. No. 2003/0004781). This rejection is respectfully traversed with respect to the amended claims.

The present invention generally relates to a computer-implemented method, or a computer-readable medium for causing a computer to perform a method for calculating, prior to the release date of an electronic media (such as a new movie to be released, a game for game consoles, etc.), the post-release rental demand for such media, and using that information to determine an open-buy quantity of the electronic media for purposes of minimizing rental surplus after the release date while still accommodating the rental demand of the electronic media upon the release date.

Claims 18 and 31 have been further amended to further clarify the scope of the invention claimed, including specific steps for determining pre-release demand through orders received from registered users, calculating a correlation characteristic between the pre-release demand of the to-be-released electronic media and the pre-release demand of at least one other already-released electronic media having similar pre-release demand, and, using the calculated correlation

characteristic, determine a post-release demand for to the to-be-released electronic media that is used to calculate an open-buy quantity of the electronic media.

In the Office Action, the Examiner conceded that Hastings failed to teach the steps recited in the original claim 24. (Office Action, pg. 6, paragraph 17). Thus, Hastings alone fails to disclose all the limitations of amended claim 18.

The Examiner again acknowledged, at page 4 of the Detailed Action, that Hastings is deficient in many respects, including a lack of disclosure on steps related to determining a pre-release demand for an electronic media, calculating correlation characteristic between the pre-release demand of the electronic media with the pre-release demand of other already-released electronic media, and determining a post-release demand using the calculated correlation characteristics.

The Examiner cites Mallon to make up for these deficiencies.

Applicants again respectfully disagree with the Examiner in that Mallon fails to make up for the deficiencies of Hastings.

Again, as previously communicated, Mallon generally discloses a modeling system configured to model aggregate behavior of a population as a function of aggregate on-line interest data. Although Mallon mentions that its method may be used to predict rentals or sales of video tapes, audio tapes, etc. (paragraphs [0088], as cited by the Examiner) and generally talks about using online interest data in predicting economic activity related to a movie (paragraphs [0070]), Mallon does not specifically teach or suggest ANY of the steps that are discussed above.

The Examiner's Response to Arguments, at pages 2-3 of the Detailed Action, simply suggests that Mallon discloses the general concept of predicting a measure of economic activity. In

particular, although Mallon discusses, at paragraphs [0002] to [0003], uses of surveys to approximate future interest in a new movie, there is no disclosure whatsoever as to determining a pre-release demand of an electronic media via calculating electronic orders received from registered users, calculating correlation characteristics between the determined pre-released demand of the electronic media and the pre-release demand of already-released electronic media, using the calculated correlation characteristic to determine a post-release demand, and calculating an open-buy quantity of the electronic media using the determined post-release demand. Rather than supporting the argument of obviousness with specific disclosures in Mallon, the Examiner appears to combine hindsight logic with Mallon, using the present invention as a blueprint. The Examiner's logic amounts to liberal use of official notices, which is not permitted even under *KSR*. Nothing in *KSR* condones reading the prior art beyond their actual scope of disclosure.

Applicants respectfully submit that, even when combined, Hastings and Mallon do not teach or suggest the present invention as specifically recited in Claims 18 and 31. Applicants therefore submit that Claims 18 and 31, as well as all claims dependent thereupon, are not obvious in view of Hasting and Mallon.

The Examiner rejected claims 21-23 under 35 U.S.C. 103(a) as being unpatentable over Hastings in view of VanOrman (U.S. Patent No. 7,085,727). This rejection is respectfully traversed.

As discussed above, neither Hastings nor Mallon disclose, teach or suggest all of the limitations of amended Claim 18. VanOrman fails to make up for the deficiencies of Hastings and Mallon. As previously communicated, VanOrman discloses an automated movie rental and notification system including a computer having a movie database containing hold and reservation lists and movie records. VanOrman does not relate to determining pre-release and post-release rental demands.

Because none of Hastings, Mallon, nor VanOrman, alone or in combination, discloses, teaches, or suggests all of the limitations of Claim 18, it is respectfully submitted that the rejection of claims 21-23 under 35 U.S.C. § 103(a) has been overcome.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance.

An entry of amendments after final is respectfully requested as Applicants have added no new matters to the amended claims.

Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection

with the filing of this document to Deposit Account No. 03-1952 referencing docket no.

562072000100. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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